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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,000	12/09/2003	Robert R. Steuer	P65684US3	2727
136	7590	06/17/2005		
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			EXAMINER KREMER, MATTHEW J	
			ART UNIT 3736	PAPER NUMBER

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/730,000	STEUER ET AL.	
	Examiner	Art Unit	
	Matthew J. Kremer	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/05/105; 12/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities. Claim 1 recites the limitation "wherein all of the photoemitters emit light of only a single wavelength" in line 5. The specification does not disclose photoemitters having a single wavelength but teaches that the photoemitters having the same wavelength. As stated on page 4, lines 16-18 and page 30, lines 8-9, the current specification teaches that the emitters emit a wavelength band (805-880nm) not a single wavelength. In fact, even the most precise emitters, i.e., lasers, emit a band of wavelengths not just a single wavelength. In view of the above remarks, the Examiner has interpreted "having a single wavelength" in claim 1, line 5 to mean "having the same wavelength". Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,167,230 to Chance. Chance teaches a sensor that comprises two photoemitters 12 and 14 (1/2 W flashlight bulbs) and one photodetector 17. (Fig. 4 of Chance). These

emitters and detectors are arranged collinear and alternatingly. It is noted that the limitation “for the transcutaneous measurement of vascular access blood flow” in the preamble was not given any patentable weight and was not considered a limitation since the body of the claim fully and intrinsically sets forth all of the limitations of the claimed invention and the preamble merely states the purpose or intended use of the invention rather than any distinct definition of any of the claimed invention’s limitations.

See MPEP 2111.02.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,803,909 to Maki et al. (Maki). Maki teaches a sensor that comprises one photoemitter 204 and two photodetectors 207-a and 207-b. (Fig. 15 of Maki). These emitters and detectors are arranged collinear and alternatingly. It is noted that the limitation “for the transcutaneous measurement of vascular access blood flow” in the preamble was not given any patentable weight and was not considered a limitation since the body of the claim fully and intrinsically sets forth all of the limitations of the claimed invention and the preamble merely states the purpose or intended use of the invention rather than any distinct definition of any of the claimed invention’s limitations. See MPEP 2111.02.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,692,504 to Essenpreis et al. (Essenpreis). Essenpreis teaches a sensor that comprises two photoemitters 17a and 17b and one photodetector 18. (Figs. 9-10 of Essenpreis). These emitters and detectors are arranged collinear and alternatingly. It

is noted that the limitation "for the transcutaneous measurement of vascular access blood flow" in the preamble was not given any patentable weight and was not considered a limitation since the body of the claim fully and intrinsically sets forth all of the limitations of the claimed invention and the preamble merely states the purpose or intended use of the invention rather than any distinct definition of any of the claimed invention's limitations. See MPEP 2111.02.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 5,218,962 to Mannheimer et al. (Mannheimer) teaches a sensor that comprises two photoemitters 254 and 262 and two photodetectors 258 and 266. (Fig. 8 of Mannheimer). These emitters and detectors are arranged collinear and alternatingly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kremer whose telephone number is 571-272-4727. The examiner can normally be reached on Mon. through Fri. between 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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ERIC F. WINAKUR
PRIMARY EXAMINER